



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(A-475-818)

Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 10, 2012, the Department of Commerce (“Department”) initiated a changed circumstances review of the antidumping duty order on certain pasta from Italy in order to determine whether Delverde Industrie Ailimentari S.p.A. (“Delverde”) is the successor-in-interest to Del Verde S.p.A., a company excluded from the order.¹ We preliminarily determine that Delverde is not the successor-in-interest to Del Verde S.p.A. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*).

FOR FURTHER INFORMATION CONTACT: James Terpstra, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3965.

¹ See *Certain Pasta from Italy: Notice of Initiation of the Antidumping Duty Changed Circumstances Review*, 77 FR 47816 (May 10, 2012) (“Initiation Notice”).

SUPPLEMENTARY INFORMATION

Background

On July 24, 1996, the Department published in the *Federal Register* the antidumping duty order on pasta from Italy.² Pursuant to a decision by the Court of International Trade, the Department determined that Del Verde S.p.A. had a *de minimis* dumping margin and should be excluded Del Verde S.p.A. from the order.³

On July 18, 2012, Delverde requested a changed circumstances review. On August 10, 2012 the Department initiated this review.⁴ On August 16, 2012, the Department requested additional information from Delverde, which was submitted on September 20, 2012 (“Supplemental Response”).

On October 31, 2012, and November 29, 2012, Petitioners⁵ submitted comments on this review. On December 14, 2012, the Department requested additional information from Delverde, which was provided, in part, on January 18, 2013, and after an extension granted, the remainder was submitted on March 5, 2013 (“Second Supplemental Response”).

On February 25, 2013, Petitioners submitted additional comments. On March 12, 2013, the Department requested additional information from Delverde, which was provided on March 26, 2013 (“Third Supplemental Response”).

² See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR 38547 (July 24, 1996); see also *Notice of Second Amendment to the Final Determination and Antidumping Duty Order: Certain Pasta From Italy*, 61 FR 42231 (August 14, 1996).

³ See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy*, 66 FR 65889 (December 21, 2001).

⁴ See *Initiation Notice*.

⁵ Petitioners are New World Pasta Company, Dakota Growers Pasta Company, and American Italian Pasta Company.

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union (“EU”) authorized body and accompanied by a National Organic Program import certificate for organic products.⁶ Effective July 1, 2008, gluten free pasta is also excluded from this order.⁷

The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Preliminary Results of Changed Circumstances Review

In this changed circumstances review, pursuant to section 751(b) of the Tariff Act of 1930, as amended (“the Act”), the Department conducted a successor-in-interest analysis. In making

⁶ On October 10, 2012, the Department revised the “Scope of the Order” to recognize the EU-authorized Italian agents for purposes of the antidumping and countervailing duty orders on pasta from Italy. See Memorandum from Yasmin Nair to Susan Kuhbach, titled “Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy,” dated October 10, 2012, which is on file in the Department's Central Records Unit

⁷ See *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.⁸ While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor.⁹ Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.¹⁰

Delverde explained that in 2005, Del Verde S.p.A. became insolvent and entered bankruptcy; the company's assets (such as production facilities and trademark) were subsequently purchased by a newly formed company, Delverde, owned by Faro S.r.L. ("Faro"), an Italian turnaround investment fund which made a number of investments and changes to the company (discussed below). From 2006 through 2009, Delverde was in operation, and Faro described this as the "Re-Launch" period. Between 2008 and 2010, Molinos Rio De La Plata S.A. ("Molinos"), a large Argentinian food company, purchased and assumed full control of Delverde.

In conducting a successor-in-interest analysis, while we generally consider information from immediately before and after the formation of a new entity, the Department considers all

⁸ See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010); and *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (November 18, 2005) (*Brake Rotors*), citing *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992).

⁹ See, e.g., *Brake Rotors*.

¹⁰ See *id.*; see also, e.g., *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India*, 77 FR 64953 (October 24, 2012), unchanged in *Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India*, 77 FR 73619 (December 11, 2012).

information on the record relevant to the determination.¹¹ In the instant case, we analyzed the effect that the bankruptcy had on the company and the changes to the management, production facilities, supplier relationships, and customer base that occurred as a result of the bankruptcy and liquidation of Del Verde S.P.A and its change of ownership in 2005.

First, we find that there are four critical aspects of the bankruptcy: 1) the court found that because Del Verde S.p.A.'s losses "had completely wiped out the company's stated capital," and because its shareholders were unable to make shareholders decisions since June 8, 2004, Del Verde S.p.A., (*i.e.*, the legal entity that was excluded from this antidumping duty order) was deprived of "the ability to operate," which provided "grounds for dissolution of the company;"¹² 2) Faro acquired Del Verde S.p.A.'s production facility and trademark, and the sale was approved by the bankruptcy judge on October 13, 2005;¹³ 3) the owners of Delverde are different from the owners of Del Verde S.p.A.;¹⁴ 4) the operations of Del Verde S.p.A. ceased, and another legal entity produced and sold pasta under the name of Delverde Industrie Alimentari, S.p.A.¹⁵

With respect to the management, we find that there were several important changes to management as a result of the bankruptcy and change in ownership in 2005. Delverde states that Faro "...added top-level executive supervisors" and installed "top executive managers in a few key positions."¹⁶ While Delverde characterizes these changes as minor, we find that these were

¹¹ See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results and Termination, in part, of the Antidumping Duty Changed Circumstance Review*, 76 FR 64898 (October 19, 2011).

¹² See Second Supplemental Response, at 2.

¹³ See Changed Circumstance Request, at 3.

¹⁴ See *id.*

¹⁵ See Second Supplemental Response, at 2.

¹⁶ See Changed Circumstance Request, at 5.

significant changes in the top level management.¹⁷ We also find that there were significant changes to Delverde's suppliers as a result of the bankruptcy and change in ownership, though we do not find that there were significant changes to Delverde's customers or production facilities immediately following the bankruptcy. However, we find that the bankruptcy resulted in a significant change to the company because 1) the company Delverde S.p.A. effectively ceased to exist as a commercial entity; and 2) the company that purchased the existing assets, Faro, took extensive measures to "relaunch" or "restart" the pasta business that used to be Delverde S.p.A.; and 3) although the pasta factory and the Delverde brand name were constant elements through the history of these entities, the magnitude of the changes, as discussed above and in the "Prelim Memo" as a result of the bankruptcy and change in ownership reflect the creation of a new entity. For example, Faro's investments in the factory totaled approximately 2.8 million Euros, and affected machinery, plant facilities, and laboratory equipment. These investments were made to restart operations, improve productive and administrative efficiency, and to upgrade product quality.¹⁸ Therefore, we preliminarily find that the record evidence does not support Delverde's claim that it is the successor-in-interest to Del Verde S.p.A.

Consequently, we preliminarily determine that Delverde should not be given the same antidumping duty treatment as Del Verde S.p.A, which was excluded from the order. Instead, Delverde, as a new entity, is not excluded from the order.¹⁹ This determination will apply to all entries of the subject merchandise entered or withdrawn from warehouse, for consumption on or

¹⁷ Because of the proprietary nature of the information concerning the changes to management as a result of the 2005 bankruptcy and change in ownership, for further discussion see "Preliminary Successor-in-Interest Determination Analysis Memorandum" ("Prelim Memo"), dated concurrently with this notice.

¹⁸ See Third Supplemental Response, at 1 – 3.

¹⁹ See *Certain Pasta From Italy: Notice of Final Results of 16th Antidumping Duty Administrative Review; 2011–2012*, 79 FR 11409 (February 28, 2014), in which Delverde Industrie Alimentari S.p.A was assigned a company-specific cash deposit rate of 13.09 percent.

after the date of publication of the final results of this changed circumstances review.²⁰ This deposit rate shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 10 days after the date of publication of this notice via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by IA ACCESS, no later than 5:00 p.m. Eastern Time within 10 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in case briefs.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or

²⁰ See *Granular Polytetrafluoroethylene Resin from Italy: Final Results of Changed Circumstances Review*, 68 FR 25327 (May 12, 2003).

within 45 days after the publication of the preliminary results if all parties in this review agree to our preliminary results.

We are issuing and publishing this determination and notice in accordance with sections 751(b) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

May 12, 2014
Date

[FR Doc. 2014-11390 Filed 05/15/2014 at 8:45 am; Publication Date: 05/16/2014]